

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 386547
Issued to: Thomas A. BAGGETT

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2116

Thomas A. BAGGETT

This appeal has been taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 5.30-1.

By order dated 8 November 1976, an Administrative Law Judge of the United States Coast Guard at Norfolk, Virginia admonished Appellant upon finding him guilty of negligence. The specification found proved alleges that while serving as a First Class Pilot on board the SS PHILLIPS WASHINGTON under authority of the license captioned above, on or about 31 January 1976, Appellant failed to keep clear of overtaken vessels as required by the Inland Rules of the Road, thereby contributing to a collision between SS PHILLIPS WASHINGTON, the tug D.T. SHERIDAN, and the barge SEA STAR.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of four witnesses and eighteen documentary exhibits.

In defense, Appellant offered in evidence his own testimony, the testimony of seven witnesses and seven documentary exhibits.

The Administrative Law Judge introduced seven documents as Administrative Law Judge exhibits.

At the end of the hearing, the Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then served a written order of admonishment on Appellant and ordered that a copy of the admonition be placed in Appellant's official record.

The entire decision and order was served on 13 November 1976. Notice of appeal was filed on 13 December 1976, and perfected on 22 March 1977.

FINDINGS OF FACT

On 31 January 1976, Appellant was serving as First Class Pilot on board the SS PHILLIPS WASHINGTON and acting under authority of his license while the ship was in the waters of Tampa Bay proceeding inbound for the Port of Tampa, Florida.

Appellant, a Tampa Bay Pilot, boarded the PHILLIPS WASHINGTON in the vicinity of the Tampa Bay sea buoy at approximately 1015 and proceeded into the Gadsen Point Cut at the vessel's full maneuvering speed of twelve knots. The D.T. SHERIDAN and barge SEA STAR were ahead the PHILLIPS WASHINGTON in the Cut. All there vessels were inbound, with the tide. A Japanese vessel, the NICHIRIMAN MARU was outbound and deep loaded, in Cut C Channel.

At 1245, Appellant entered into a radio agreement with the Japanese vessel that the latter would hold back so the PHILLIPS WASHINGTON might take the turn from Cut A Channel into Cut C Channel and the vessels pass on the straight away of Cut C Channel instead of at the turn. At the time of radio contact, the vessels were each about three miles from the turn. Immediately thereafter, Appellant contacted the operator of the D.T. SHERIDAN/SEA STAR, who agreed to the PHILLIPS WASHINGTON's passing on her port side in Cut A Channel. At the time of radio contact, the SHERIDAN was approximately one-half mile in front of the PHILLIPS WASHINGTON, both vessels still being in Gasden Point Cut. Appellant requested the captain of the SHERIDAN/SEA STAR to slow down to allow the PHILLIPS WASHINGTON to pass before the turn. The SHERIDAN/SEA STAR thereupon decreased her speed from nine to six knots.

At 1255 the D.T. SHERIDAN/SEA STAT had maneuvered the turn from Gasden Point Cut into Cut A Channel and the PHILLIPS WASHINGTON was in the process of making the turn and commencing the overtaking. At that time Appellant requested the SHERIDAN to move further to the right, and the SHERIDAN proceeded to do so.

As the PHILLIPS WASHINGTON started to overtake the barge, there was lateral distance of fifty to seventy-five feet between them.

At approximately 1258, as the bow of the PHILLIPS WASHINGTON moved ahead of the bow of the barge, the latter sheered to port and its bow struck the PHILLIPS WASHINGTON some 381 feet aft of the bow.

Immediately prior to the sheer, the hawser connecting the SHERIDAN and SEA STAR had slackened somewhat, although not enough to touch the water. The captain of the SHERIDAN had been steering the vessel to starboard, at Appellant's request, and had moved so far that he feared his vessel might ground outside the channel. As his barge started to sheer, he went to full ahead and turned the

vessel to port, attempting to break the sheer by moving his stern to starboard and pulling the bow of the SEA STAR away from the PHILLIPS WASHINGTON. The captain was only partially successful, however, and the barge struck the PHILLIPS WASHINGTON at an angle.

Almost immediately after the barge collision, as the PHILLIPS WASHINGTON proceeded ahead, the bow of the tug D.T. SHERIDAN struck the starboard side of the PHILLIPS WASHINGTON some 228 feet aft of the bow. The SEA STAR then rode up and struck the SHERIDAN in its port quarter. The PHILLIPS WASHINGTON proceeded without stopping. The tug had lost a spare hawser overboard, and stopped to retrieve it before proceeding. There was some property damage as a result of the collision.

The channels in question are 400 feet wide and 34 feet deep, with the water at the right side of the channel near the collision site being 10 or 11 feet or less.

The PHILLIPS WASHINGTON is a steel tanker, 492'09" in length and 68' in breadth, with a gross tonnage of 10,473 tons. At the time of the collision she was carrying 15,473 long tons of petroleum products, and had a draft forward of 31'04" and aft of 29'.

The D.T. SHERIDAN is a steel tug boat with a gross tonnage of 383 tons, 129'09" in length and 28' in width. Her draft forward was 13'01" and 15'06" aft. At the time of collision, the SHERIDAN was towing the steel barge SEA STAR on an 80' hawser. The SEA STAR is a barge of 6,704.08 gross tons, with a length of 349'08" and beam of 66'. On the date in question, the barge was light and had a draft forward of 4' and aft of 5'.

At the time of collision, the wind was light out of the South-southwest, and the weather was clear with visibility of six to seven miles. There was little sea and tide was in a flood stage, slightly increasing the speed of inbound vessels in Tampa Bay. The tug SHERIDAN and its tow had encountered no difficulty in the channel prior to the attempted passage of the PHILLIPS WASHINGTON.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that:

- (1) The Investigating Officer failed to produce adequate evidence with respect to the standard of conduct required to prove the charge of negligence;

(2) The Administrative Law Judge erred in Findings of Fact Nos. Two and Nine and his conclusions regarding the time sequence of events prior to the collision, and

(3) The Administrative Law Judge erred in concluding as a matter of law that Appellant wrongfully failed to keep clear of the overtaken vessel.

APPEARANCE: Holland and Knight of Tampa, Florida, by Paul D. Hardy.

OPINION

I

Appellant argues that the charge of negligence may only be proved by the introduction of testimony of persons of the time station in the same situation indicating that they would have acted in a different manner. Appellant cites no authority for this proposition, and decisions of the Commandant and other federal authorities fail to support his position.

Under 46 C.F.R. 5.20-95(b), the judge's findings must be supported by substantial evidence of a reliable and probative character.

The Administrative Law Judge in this case based his determination of negligence on the rule that a pilot is held to the same standard of care normally demanded from other persons in the same station, and this implies a knowledge and observance of the rules of navigation. Article 24 of the Inland Rules of the Road provides that every vessel overtaking any other shall keep out of the way of the overtaken vessel 33 U.S.C. § 209. As an experienced Tampa Bay pilot, Appellant was bound to abide by the Rules of the Road, and I find no error in the Administrative Law Judge's decision that failure to do so constituted negligence. This holding is in line with Commandant's Appeal Decision 417 (ADAMS) wherein it was stated that a pilot's clear violation of the laws intended to promote safety is unquestionably negligence by any standard.

II

Appellant also contends that Findings of Fact Nos. Two and Nine are clearly erroneous and warrant reversal of the decision, and that the Administrative Law Judge "confused" the time sequence of events prior to the casualty in formulating his decision.

In Finding of Fact Two, the Administrative Law Judge concluded

that Appellant wrongfully failed to keep clear of the overtaken vessels as required by the Inland Rules of the Road, thereby contributing to the collision between the vessels. Appellant asserts that all "credible" testimony was to the contrary, and that the only supporting testimony was proffered by the Master of the tug, an interested party.

It is the function of the judge to evaluate the credibility of witnesses in determining what version of events under consideration is correct. Commandant's Appeal Decision 2097(TODD). The question of what weight is to be accorded to the evidence is for the judge to determine and, unless it can be shown that the evidence upon which he relied was inherently incredible, his findings will not be set aside on appeal O'Kon v. Roland 247 F. Supp. 743 (S.D.N.Y. 1965).

Review of the record discloses that the judge heard the testimony of crewmembers of both vessels, as well as expert witnesses called on Appellant's behalf. The Decision and Order indicates that all testimony was properly weighed and considered by the judge of the physical facts of the case.

Upon consideration of the totality of the evidence, the Administrative Law Judge exercised his prerogative by assigning a greater weight to the tug master's testimony regarding the events, and the record fails to indicate that such a determination was not warranted.

Finding of Fact No. Nine involves the actions of the Captain of the D.T. SHERIDAN immediately preceding the collision. The Administrative Law Judge concluded that just prior to the sheer, the D.T. SHERIDAN and her barge were as far over to the starboard side of the channel as possible. As the barge started to sheer, the Captain maneuvered quickly to starboard, then went full ahead and turned the vessel port in an unsuccessful attempt to break the sheer by moving his stern to starboard and pulling the bow of the barge away from the PHILLIPS WASHINGTON. Appellant contends that the testimony with respect to this finding is subject to serious questions of credibility, arguing that if the vessel was in the stated position, a hard turn to starboard would have resulted in a grounding.

The fact that the overtaken vessel was not so far over to starboard at the time of the sheer to cause a grounding in no way mitigates Appellant's negligence or contribution to the collision. The record indicates that the Captain of the tug pulled "more onto the right, even though it seemed...that [he] was getting into bad water" immediately prior to the sheer (Tr. Vol. I, p.53). As the barge began to sheer, the Captain made a hard turn to starboard,

immediately followed by a turn to port and full ahead (Tr. Vol. I, P.111).

The fact that the tug captain was able to accomplish this maneuver merely indicates that the tug was not so far over to the right to run aground.

Appellant's contention that the Administrative Law Judge confused the time sequence of the collision is incorrect. The testimony of both Captain Baggett, and Captain Johnson, master of the PHILLIPS WASHINGTON, indicates that immediately prior to the passing, Captain Baggett requested the tug and barge to move more to the right (Tr. Vol. II, p. 137; Vol. 1., p.166, respectively). Captain Johnson's testimony indicates that this message was relayed at 1255, immediately prior to the collision. The move to starboard was not ten minutes prior to the collision, as Appellant now contends. Since Appellant specifically requested the movement to the right, immediately prior to the overtaking, he cannot now be heard to complain that the overtaken vessel abrogated Inland Rule 21 in failing to maintain her course and speed at the time of the actual overtaking.

III

Appellant's final argument is that the Administrative Law Judge erred as a matter of law in concluding that Appellant wrongfully failed to keep clear of the overtaken vessel. Appellant maintains that the Judge's finding of negligence is based on the mere fact of collision. He also argues that reliance on the BALCH doctrine, as outlined in Commandant Appeal Decision 448 (SILL), is misplaced, since the overtaken vessel was duty bound to maintain her speed and course during the passing. Finally, Appellant reiterates his argument regarding the sufficiency of evidence discussed in Part I of this opinion, and contends that the Administrative Law Judge failed to consider recent case authority involving the negligence of navigators.

A review of the record fails to support Appellant's contention that the Judge based his finding of negligence on the mere fact of collision. The Decision and Order includes a well reasoned and well documented overview of the case law applicable to the situation at hand. As an overtaking vessel, the PHILLIPS WASHINGTON was duty bound to keep out of the way of overtaken vessel 33 U.S.C. Section 209 (Inland Rules of the Road Article 24). The duty to keep out of the way embraces the duty to keep away by a prudent and safe margin, having reference to all contingencies of navigation Lady Nelson v. Creole Petroleum Corp. 224 F2d 591 (2d Cir. 1955.) Additionally, the duty to avoid the effects of suction between vessels is placed on the overtaking vessel Union Oil

Company of California v. The Tug Mary Malloy 414 F2d 669 (5th Cir. 1969).

The Administrative Law Judge found that Appellant was negligent in failing to keep out of the way of the SHERIDAN/SEA STAR. His conclusion is premised on the finding that Appellant "in his haste to pass the SHERIDAN/SEA STAR...did so at an excessive speed at too close quarters under the circumstances" (Decision and Order p.19).

Appellant also maintains that the Judge's reliance on the BALCH doctrine is misplaced, arguing that the overtaken vessel was duty bound to maintain her course and speed during the passing.

Article 21 of the Inland Rules of the Road (33 U.S.C. §§206) requires that an overtaken vessel maintain her course and speed and an approaching vessel keep out of the way. Appellant's reliance on this rule is misplaced however, since the record establishes that immediately prior to the collision, Appellant specifically requested the barge and tug to move further to the right. (Tr Vol. II p. 137; Vol 1 p 166). The judge found that as the D.T. SHERIDAN was merely complying with Appellant's request, Appellant could not be heard to complain that the overtaken vessel failed to maintain her course and speed. This conclusion was not based on the The Aureole, 113 Fed. 224 (3rd Cir. 1902), as Appellant contends. Additionally, it is immaterial to a determination of this appeal whether or not any action or failure to act on the part of the Captain of the SHERIDAN/SEA STAR contributed to the collision, since the hearing below was confined to the question of negligence on the part of Appellant.

Appellant cites several cases regarding negligence of navigators in arguing that to find a pilot negligent, it must be found that he deviated from the required standard of his profession and not that he merely adopted a course of conduct different from that which another would have followed.

All cited cases emphasize, however, that a harbor pilot is duty bound to exercise skill and a high degree of care, consistent with that degree of skill commonly possessed by others in the same employment.

While it is true that a navigator is not charged with negligence unless he makes a decision which nautical experience and good seamanship would condemn as unjustifiable at the time and under the circumstances shown, American Zinc co. v. Foster, 313 F. Supp 671 (S.D. Miss. 1970) I find that Appellant's conduct in passing the D.T. SHERIDAN at an excessive speed and at too close quarters warrants the decision in this case.

CONCLUSION

The findings of the Administrative Law Judge, supported by substantial evidence, establish that it was the duty of Appellant to keep clear of the overtaken vessel as required by the Inland Rules of the Road. Appellant was negligent in failing to fulfill this duty, thereby contributing to a collision between the SS PHILLIPS WASHINGTON, the tug D.T. SHERIDAN, and the barge SEA STAR.

I therefore, affirm the decision of the Administrative Law Judge in this case.

ORDER

The order of the Administrative Law Judge dated at Norfolk Virginia on 8 November 1971, is AFFIRMED.

O. W. SILER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 11th day of April 1978.

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